

REMARKS

Claims 1, 4-9, 17-19, and 22-25 are pending in the present application.

Claims 1, 4-5, 8-9, 17-19, and 22-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,709,002 to Tambornino (hereinafter “Tambornino”) in view of U.S. Patent No. 4,565,345 to Templeman (hereinafter “Templeman”).

Claims 6, 7 and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tambornino as modified by Templeman, and in view of U.S. Patent Application Publication No. 2005/0246869 to Chene et al. (hereinafter “Chene”).

Rejection of Claims 1, 4-5, 8-9, 17-19, and 22-24 as Unpatentable Over Tambornino in View of Templeman

Independent claim 1 requires 1) a hitch ball receiver having at least one acircular recess having a sidewall; 2) a hitch ball; and 3) a base integrally formed with the hitch ball, wherein the base is engageable with the sidewall of the recess to prevent rotation of the hitch ball during installation.

Examiner states that Tambornino discloses **all the structure as claimed** in claims 1, 4-5, 8-9, 17-19, and 22-24. (*See* Final Office Action dated May 22, 2007, page 2.) Examiner further states that Tambornino discloses “the towing assembly (figure 6), comprising: a hitch ball receiver having at least one cavity; a hitch ball (18); a member connected with the hitch ball. Tambornino lacks the teaching of a member engageable with the cavity to prevent rotation of the hitch ball during installation.” (Final Office Action dated May 22, 2007, page 2.)

Although Examiner states that Tambornino discloses all the structure claimed in claims 1, 4-5, 8-9, 17-19, and 22-24, Applicant respectfully submits that a review of Tambornino concludes that Tambornino does not disclose all the structure claimed in claims 1, 4-5, 8-9, 17-19, and 22-24 of the present application. Tambornino does not disclose: 1) a recess; 2) the recess being acircular; 3) sidewalls of the recess; 4) a base; and 5) the base integrally formed with the ball hitch.

Tambornino Does not Disclose a Recess as Claimed in the Present Application

Applicant respectfully submits that Tambornino does not disclose a recess in a hitch ball receiver as claimed in independent claim 1. In addition, Tambornino does not disclose that such a recess is acircular or that such a recess has sidewalls.

Examiner states that Tambornino discloses “a hitch ball receiver having at least one cavity.” (Final Office Action dated May 22, 2007, page 2.) The present application does not claim a cavity and Tambornino does not disclose a cavity or a recess. Tambornino does disclose a circular hole formed in a hitch tongue, as best seen in Figures 4 through 6 of Tambornino. Tambornino states: “[a] circular hole 72 may be formed in the hitch tongue 44 for ready attachment of the desired hitch ball 18, such as with a hitch ball post of a hitch ball 18 extending through the circular hole 72.” (Tambornino, col. 5, lns. 33-36.) Neither the circular hole 72 nor any other feature disclosed in Tambornino could be interpreted as a recess as claimed in independent claim 1 of the present application.

The present application makes a sharp distinction between a recess in a hitch ball receiver and an aperture or hole passing through the hitch ball receiver. The present application states: “[a] hitch ball mounting aperture 20 is provided in the tongue 16 of the hitch ball receiver 12. A recess 22 is provided around the aperture 20 in a first face 24 of the tongue 16. A second recess 26 is provided around the mounting aperture 20 in a second face 28 of the tongue 16 (see also FIGS. 2-4).” (Present application, Paragraph 0022.) In addition to FIGS. 2-4, FIG. 1 of the present application clearly illustrates the difference between a recess 22 and an aperture 20. Figure 6 of Tambornino shows a cross-sectional view of the hitch tongue 44. The hitch tongue 44 includes a hole 72 and does not include any form of recess. It is clear that Tambornino disclose a circular hole 72 through the hitch ball tongue similar to the aperture 20 of the present application; however, it is equally clear that Tambornino **does not** disclose a recess as described and claimed in the present application.

Since Tambornino does not disclose a recess, Tambornino also does not disclose a sidewall of a recess or an acircular recess as claimed by independent claim 1 of the present application.

Tambornino Does not Disclose a Base as Claimed in the Present Application

Applicant respectfully submits that Tambornino does not disclose a base. In addition, Tambornino does not disclose the base integrally formed with the hitch ball.

Examiner states that Tambornino discloses “a member connected with the hitch ball.” (Final Office Action dated May 22, 2007, page 2.) The present application does not claim a member and Tambornino does not disclose a base. Tambornino does disclose a hitch ball with a hitch ball post. Tambornino states: “[a] circular hole **72** may be formed in the hitch tongue **44** for ready attachment of the desired hitch ball **18**, such as with a **hitch ball post** of a hitch ball **18** extending through the circular hole **72**.” (Tambornino, col. 5, lns. 33-36.) (Emphasis added.)

The present application makes a distinction between a base integrally formed with a hitch ball and a shank or hitch ball post. The present application states: “[t]he towing assembly **10** also includes a hitch ball **30** including a base **32** and threaded mounting shank **34**.” (Present application, Paragraph 0023.) As can be seen by comparing FIG. 1 of the present application to figure 6 of Tambornino, the shank 34 of the present application is very similar to the hitch ball post of Tambornino. However, the comparison also shows that the hitch ball of Tambornino does not include any form of a base. It is clear that Tambornino does disclose a ball hitch post similar to the shank 34 of the present application; however, it is equally clear that Tambornino **does not** disclose a base as described and claimed in independent claim 1 of the present application.

Since Tambornino does not disclose a base, Tambornino also does not disclose a base integrally formed with a ball hitch as claimed by independent claim 1 of the present application.

Templeman Does not Cure the Deficiencies of Tambornino

“The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. . . . To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be

a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.**" (MPEP 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).) (Emphasis added.)

As stated in the MPEP, the Examiner has the burden to establish the *prima facie* case of obviousness, which includes a showing that the prior art references in combination teach or suggest all the claimed limitations. Examiner has offered Tambornino as disclosing, "all the structural as claimed," which includes a recess and a base. (See Final Office Action dated May 22, 2007, page 2; claims of the present application.) As discussed above, Applicant respectfully submits that the limitations of a recess and a base are not disclosed in Tambornino. Examiner cites Templeman as curing Tambornino's lack of disclosure of a functional limitation, i.e., Examiner states: "Tambornino lacks the teaching of a member engageable with the cavity to prevent rotation of the hitch ball during installation." (Final Office Action dated May 22, 2007, page 2.)

Applicant respectfully submits that the Examiner has failed to meet a *prima facie* case of obviousness by failing to show that the prior art references teach or suggest all of the claim limitations. Therefore, a rejection of the pending claims under 35 U.S.C. § 103(a) as obvious over Tambornino in light of Templeman is improper and should be withdrawn.

"If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." (MPEP 2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).) Applicant respectfully submits that it is shown herein that independent claim 1 is nonobvious over Tambornino in view of Templeman. In addition, claims 4-5, 8-9, 17-19, and 22-24 all depend either directly or indirectly from independent claim 1. Therefore, claims 4-5, 8-9, 17-19, and 22-24 are also nonobviousness over Tambornino in view of Templeman.

Rejection of Claims 6, 7, and 25 as Unpatentable Over Tambornino as Modified by Templeman in View of Chene

As discussed above, Applicant respectfully submits that the limitations of a recess and a base are not disclosed in Tambornino. Examiner states Tambornino as modified by

Templeman “lacks the teaching of a spacer. Chene discloses a clamping ring utilizing a spacer (18) to facilitate the fastening of a nut and a bolt structure.” (Final Office Action dated May 22, 2007, page 3.) As Chene is cited for disclosing a spacer, the disclosure of Chene fails to cure the failure of Tambornino to disclose a recess or a base; therefore, claims 6, 7, and 25 are nonobvious over Tambornino as modified by Templeman in view of Chene.

APPLICANT REQUESTS EXAMINER INTERVIEW

If the Examiner does not agree that the application is now in condition for allowance, Applicant requests an interview with the Examiner prior to the next office action. Applicant submits herein a completed Applicant Initiated Interview Request Form (PTOL-413A) as recommended in MPEP 713.01. Applicant requests that Examiner set a time for the interview at the Examiner’s convenience and inform the undersigned attorney of that time in advance. Applicant will be prepared to discuss the appropriateness of citing Tambornino, Templeman, and Chene in forming an obviousness rejection under 35 U.S.C. § 103. Applicant respectfully submits that an interview before the next office action is appropriate and proper under MPEP 713.02, which states: “[a] request for an interview prior to the first Office action is ordinarily granted in continuing or substitute applications.”

CONCLUSION

In light of the foregoing, Applicant submits that the application is now in condition for allowance, and accordingly, respectfully requests the allowance thereof. If the Examiner has any questions pertaining the to above, the undersigned attorney would welcome a phone call to provide any further clarification or a formal interview.

Respectfully submitted, ,

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